IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.810 OF 2002.

Smt.Chandrika Himmatlal Khatri : Appellant.

versus.

The State of Maharashtra & Anr. : Respondents.

Smt.Nisha Valani & Mr.A.K.Prajapati for the appellant.

Mr.D.R.More, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 11th August 2004.

P.C.

1. Heard the advocate for the appellant - the original complainant and, the learned APP for the State. This is an appeal against acquittal of the accused in a case instituted by the complainant under Section 138 of the Negotiable Instruments Act. The acquittal is the result of dismissal of complaint because of the absence of complainant on particular date.

2. Notice of this appeal was served upon

Respondent No.2 who was the original accused. He has appeared in the court and stated that he would engage his own advocate at his costs. Thereafter neither the accused has remained present nor his advocate. Today also nobody is appearing for the respondent/accused. Therefore, I am disposing of this appeal after hearing the advocate for the appellant.

3. Roznama of the case before the Magistrate is annexed with this appeal. It starts from 11/12/98 when the staff was on strike. Thereafter complainant remained present with advocate on the next date i.e. 19/2/99 and verification statement was recorded and summons was ordered to be issued to the accused. Next date of the roznama is of 23/6/99 when the complainant was absent. Her advocate was present. But the accused was absent. Thereafter the case was taken board on 6/12/99 when the learned Magistrate was on leave. Both the parties were absent and their advocates were absent on 23/8/00. Thereafter the complainant was present with advocate. Accused was absent and bailable warrant was issued on 8/12/00. The matter was adjourned to 27/4/01. On 27/4/01 the

complainant remained absent. The matter was adjourned to 26/9/01 on which date the complainant remained absent, her advocate was absent, so also the advocate for the accused and the accused. For non-appearance of the complainant, the case was dismissed and the accused was acquitted on same date i.e. on 26.9.2001.

4. Advocate for the complainant pointed out that if the bailable warrant was issued against the accused then it was necessary for the court to she whether the warrant was executed or not or the accused was present or not. Roznama does not show anything in this regard and consequently on the 2nd date the complaint came to be dismissed.

5. I find considerable force in the submission made by the advocate for the accused. Therefore, the appeal is allowed. The impugned order of acquitting the accused is set aside. Complaint is restored to file of the said Magistrate. The concerned Magistrate, after receipt of the order from this Court, will issue notice to the accused again and dispose of the complaint according to law within nine months at

the most from the date of receipt of the order from this Court.

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